

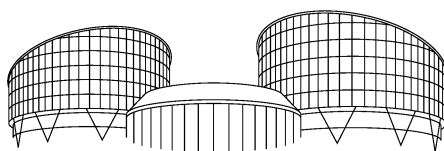
La CEDU su un caso di duplice violazione dell'art.3 (CEDU, sez. III, sent. 12 novembre 2019, ric. n. 37735/09)

La Corte Edu si pronuncia sul caso di una giovane cittadina russa, che aveva lamentato diverse violazioni della Convenzione conseguenti al grave trauma subito a causa del violento arresto del padre, a cui aveva assistito all'età di nove anni.

La Corte, avendo ritenuto credibili le accuse della ricorrente, confermate anche da alcuni testimoni, ha, innanzitutto, stigmatizzato l'operato delle autorità interne, la cui unica risposta a tali denunce era consistita in verifiche preliminari superficiali ed inefficaci, rifiutando di procedere all'apertura di un procedimento penale ed all'avvio di una seria indagine sul caso.

D'altra parte, le forze dell'ordine, che sapevano o comunque avrebbero dovuto sapere della presenza *in loco* della ricorrente al momento dell'operazione contro il padre, non avevano in alcun modo tenuto conto degli interessi della minore al momento della pianificazione ed esecuzione dell'operazione medesima, esponendola ad una scena di violenza che le aveva procurato grave turbamento, tanto che per anni dopo l'arresto la stessa aveva sofferto di un disturbo neurologico e psichico post-traumatico.

I Giudici di Strasburgo hanno, pertanto, ritenuto integrate due violazioni dell'art.3 Cedu: da un lato, per l'inadempimento da parte delle autorità russe dell'obbligo positivo di prevenire qualsiasi maltrattamento ai sensi della norma citata, conseguente all'aver consentito che la ricorrente assistesse a un episodio di tale violenza; dall'altro lato, la violazione dell'obbligo che lo stesso art.3 incardina in capo allo Stato di indagare efficacemente su accuse credibili di violenza commessa da agenti di polizia, conseguente all'aver omesso l'avvio di un'indagine efficace sull'incidente del 31 maggio 2008 da cui la causa stessa è originata.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A v. RUSSIA

(Application no. 37735/09)

JUDGMENT

Art 3 • Positive obligations • Inhuman treatment • Degrading treatment • Nine-year-old child's
subjection to witnessing violent arrest of her father who put up no resistance • Effective
investigation • Insufficient investigation into credible allegations of police ill-treatment

STRASBOURG

12 November 2019

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be
subject to editorial revision.*

In the case of A v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Paul Lemmens, *President*,

Georgios A. Serghides,

Paulo Pinto de Albuquerque,

Helen Keller,

Dmitry Dedov,

Alena Poláčeková,

María Elósegui, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 15 October 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 37735/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms A ("the applicant"), on 14 April 2009. The President of the Section acceded to the applicant's request to grant her anonymity (Rule 47 § 4 of the Rules of Court).
2. The applicant was represented initially by her mother, and subsequently by Ms O.A. Sadovskaya, a lawyer practising in Nizhniy Novgorod. The Russian Government ("the Government") were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.
3. The applicant alleged, in particular, that by carrying out her father's violent arrest in her presence, the authorities had breached her rights under the Convention.
4. On 11 September 2017 notice of the application was given to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1998 and lives in Apsheronk.

A. The applicant's father's arrest

6. On 31 May 2008 the applicant's father (B), a police officer employed by the Apsheronk police department at the time, was arrested by the Krasnodar regional branch of the Federal Service for Drug Control ("the FSKN"), following a test purchase of drugs. The undercover operation had been organised by an FSKN unit in Tuapse and the Belorechensk unit of the Krasnodar regional department of the Federal Security Service. B's car was searched and a bag containing money was seized. Criminal proceedings were brought against him on the same day by an FSKN investigator, A.F., on the basis of the record of the test purchase of drugs, which had been prepared by FSKN officers. B was charged with selling cannabis to E.N., an undercover officer of the FSKN unit in Tuapse, who had acted as a buyer. The prosecution alleged that B had handed the drugs over to E.N. on 30 May 2008 and had received money from him on 31 May 2008, immediately before his arrest.

7. The arrest was carried out in the presence of the applicant, who was nine years old at the time. On that day, B had taken her to school for an event marking the end of the school year. At about 8.45 a.m. the applicant, accompanied by B, left the school and was getting into their car when B was approached by E.N., with whom he had previously worked at the Apsheronk police department, and they talked. The parties' accounts of the events which followed differ.

1. The applicant's account of the events of 31 May 2008

8. According to the applicant, E.N. asked B to look after his bag while he went to buy cigarettes at a nearby kiosk. B took the bag and E.N. left. Several men then ran up to B. One of them knocked him to the ground and started beating him. The applicant jumped out of the car and shouted that they should stop beating her father. One of the men shouted at her: "Shut your mouth and get into the car!" The applicant, scared, obeyed. For some time she sat in the car watching her father being beaten up and arrested. She felt unwell and needed more air. She tried to get out of the car but the men held the doors of the car from the outside so that she could not get out. At some point, when they were no longer standing near the car, she opened the car door and ran home. When approaching her house she saw men she did not recognise coming out. That also scared her and she ran towards her grandmother's house nearby. While running she started to feel giddy and thought that she would fall over. Her uncle, V.K., saw her in the street and took her to his home. She was in a state of shock and could not explain well what had happened.

9. The applicant submitted her father's written statement. She also submitted her own statement, her mother's and other witnesses' statements recorded by a lawyer, R.V., from the interregional NGO "Mothers in defence of the rights of detainees, defendants and convicts" (межрегиональная общественная организация «Матери в защиту прав задержанных, подследственных и осужденных») and signed by the interviewees.

10. According to B's statement of 20 July 2008, at 7.45 a.m. on 31 May 2008 he took his daughter A (the applicant) to school no. 1 for a school event. Shortly after 8 a.m. he received a call from E.N. asking where he was. He replied that he was at school with his child. When he and A came out of the school, E.N. was waiting for him. A got into their car, and he talked to E.N. Then E.N. asked B to look after his bag while he went to buy cigarettes at a nearby kiosk. E.N. left and B went back to his daughter, who was waiting for him to go home. As E.N. had not come back, B put the bag in the boot of the car and was about to get into the car himself. At that moment a car stopped nearby and

several men wearing tracksuits jumped out. They knocked him to the ground and started kicking him. He tried to protect his face by covering it with his hands. Then they handcuffed him and lifted him from the ground. During the beating they tore his shirt. His daughter saw him being beaten. V.E., a deputy head of the FSKN unit in Tuapse, told him that he had been arrested for selling drugs. B asked V.E. to let A go home or back to her school teacher. V.E. refused. A herself tried to get out of the car but two officers, standing at either side of the car, blocked the car doors. When the officers opened the boot of his car, he saw that A was very frightened. He pleaded with V.E. and the others to let her go but they refused. He tried to calm her down and asked her to be patient. All of this lasted for about an hour. When the officers were busy and not looking, A got out of the car and ran away in the direction of her home.

11. According to the applicant's statement of 15 August 2008 made in the presence of her mother and describing the events of 31 May 2008, a man ran up to B and pushed him in the back. B fell and the man started kicking him. B asked the men to let her go home or to call her mother so that she could come and fetch her, but the men would not listen. The applicant provided some details concerning the appearance of the men who had arrested B.

12. According to the statement given by the applicant's mother on 2 August 2008, when leaving home for school at about 7.45 a.m. on 31 May 2008, her daughter A (the applicant) and her husband (B) had had no injuries and had not complained of any health problems. Later that morning she found her daughter at their relatives' home. She was in a state of shock, unable to speak and having breathing difficulties. She was shaking, and her hands and face were trembling. The FSKN officers brought her husband home in a car that morning, in order to carry out a search. He was handcuffed. His jeans were dirty and dusty. His shirt was open, torn in some places and the buttons had been ripped off. His face was pale.

13. According to a statement of 2 August 2008 given by witness R.G., an electrician of the limited liability company Energoservis, at about 8.30 a.m. on 31 May 2008 he was checking the traffic lights at the pedestrian crossing near school no. 1. After replacing a light bulb, he climbed down from the traffic lights and saw police officer B approaching a car from the driver's door side. A girl was sitting in the back seat of the car. At that moment an FSKN officer, S.K., wearing a blue tracksuit, approached B and hit him from behind so that he fell face down, and started kicking him. B was trying to protect himself from the blows by covering his head with his hands. S.K. did not stop until someone shouted at him to do so. The girl was also shouting. An FSKN chief officer and another man were present when S.K. was beating B. Immediately thereafter R.G. left in his company car to check other traffic lights. R.G. knew the names of the police officers because he had worked on the electrical system at the local police station and the FSKN premises.

14. According to a statement of 15 August 2008 given by V.K., a police officer of the Apsheronsk police department and B's cousin, on his way home after work at about 10.30 a.m. on 31 May 2008 he met B's daughter, A, who was running somewhere. She saw him and stopped and told him that someone was beating her father. She was very frightened, stuttering and gasping for air. V.K. took her to his home and called her mother.

15. According to a statement of 15 August 2008 given by G.A., the applicant's violin teacher, before the events of 31 May 2008 the applicant had been a sociable, cheerful, hardworking, able and

promising student. After those events she became slow and reserved, as opposed to the quick learner she had been before. She became tired easily and wanted to abandon her violin studies.

16. The applicant's mother submitted photographs of the shirt B had been wearing during his arrest. Except for three buttons on the lower part of the shirt, the other buttons on the shirt were missing. The shirt was torn in the places where the buttons had been.

2. The Government's account of the events of 31 May 2008

17. According to the Government, no physical force was used against B during his arrest and the applicant was not treated in the way alleged by her. They referred to records from the detention facility in which B had been detained after his arrest (see paragraph 27 below), and to "explanations" submitted by FSKN officers S.K., V.D., A.O., V.E., E.N. and S.S. (see paragraphs 24, 36 and 38 below), Federal Security Service officer S.P. (see paragraph 39 below), Apsheronk police officers K.A. and M.I. (see paragraph 37 below), attesting witnesses A.Sh. and P.M. (see paragraphs 31 and 35 below), and FSKN officer A.Z., who had carried out the FSKN internal investigation (see paragraph 40 below).

B. State of the applicant's health after the events of 31 May 2008

18. The applicant described her state of health after the incident of 31 May 2008 as follows. She started screaming at night, wetting herself and suffering panic attacks when left alone. She stopped communicating with other children, became reserved, lost her vivaciousness, had difficulties speaking and developed a tremor affecting her face and limbs. She lost her interest in music, despite having previously been a successful violin student.

19. On 3 June 2008 the applicant was examined by a neurologist and diagnosed with a neurological disorder and neurosis-like enuresis. On 6 June 2008 she was examined by a psychologist, to whom she complained that her stress had caused screaming at night, fears and unsociability. She was diagnosed with post-traumatic stress disorder, high levels of anxiety and fixation on the stressful situation. The diagnosis of post-traumatic stress disorder was confirmed on 25 June 2008 by children's psychiatrists and psychologists at Specialised Clinical Psychiatric Hospital no. 1 in Krasnodar and the Krasnodar regional children's hospital. On the same day a neurologist from the regional children's hospital also diagnosed her with neurogenic hyper-reflective urinary bladder. A cardiologist from the same hospital confirmed her previously known diagnosis of mitral valve prolapse. She received out-patient treatment and was supervised at the Apsheronk central district hospital. She was again seen by doctors for her post-traumatic stress disorder in July and August 2008.

20. It follows from a record of the applicant's statements to a lawyer of 12 October 2017 that her state of health improved after her father's release. Her enuresis almost ceased but her nightmares continued for about two more years. She confirmed that she was currently not suffering any health problems.

21. According to a preliminary conclusion of psychologist D.S. from "Independent Expert Examination Bureau Versia" based in Moscow and St Petersburg, who interviewed the applicant on 15 February 2018 and examined her medical records, there could have been a cause-and-effect

relationship between the events of 31 May 2008 and the medical condition she developed immediately thereafter, which lasted for more than two years. In order to substantiate such a conclusion, complex psychological and psychiatric examinations needed to be carried out on the applicant with the involvement of her parents. A psychiatrist would be competent to carry out a clinical assessment of the consequences of the impact which the events of 31 May 2008 had had on her health. D.S. provided details of the cost and duration of the proposed examination.

22. An “experimental psychological examination” was carried out on the applicant by psychologist D.T. from the non-commercial organisation “Sotsialnaya Sfera” based in Nizhniy Novgorod. According to D.T.’s report of 7 March 2018, the results of the examination could be interpreted as indicating the presence of elements of post-traumatic stress disorder and a number of other conditions (high level of anxiety and low level of adaptability, “sub-depression or masked depression” and experiencing phobic disorders) as a consequence of the events of 31 May 2008 and the ensuing inquiry.

C. Inquiry by the investigating authority

23. On 10 July 2008 the applicant’s mother lodged an application with the Apsheronk district prosecutor’s office, complaining that the FSKN officers had beaten up her husband, B, in the presence of her daughter, A, which had caused harm to A’s health. B had not resisted arrest. His clothes had been torn during the beatings. A had been kept in a car and had thus been deprived of her liberty. The application was transferred to the Belorechenskiy inter-district unit of the investigative committee at the Krasnodar regional prosecutor’s office (the “investigative committee”), which carried out a pre-investigation inquiry.

24. On 10 July 2008 FSKN officers S.K., V.D. and A.O., who had apprehended B, and deputy head of the FSKN unit in Tuapse V.E., who had been present at the time, submitted identical written “explanations” to the head of the investigative committee, claiming no physical force had been applied to B during his arrest. They stated that they had apprehended B near his car in which his daughter, A, had been sitting, and that after the arrest B himself had forced her to get out of the car and sent her home.

25. Relying on the FSKN officers’ explanations, on 14 July 2008 investigator M.V. refused to institute criminal proceedings against them on the grounds that their actions lacked the elements of a crime under Article 286 of the Criminal Code (abuse of power). The investigator noted that given A’s young age and the fact that she suffered from heart disease, her father’s arrest as such could have provoked her post-traumatic stress disorder.

26. The investigator’s decision was annulled as unlawful and unfounded, and an additional pre-investigation inquiry was ordered.

27. The investigator obtained records from the temporary detention facility at the Tuapse police station, in which B had been detained after his arrest. According to those records, B had not made any complaints, had not asked for medical aid and no injuries on him had been recorded.

28. The investigator interviewed the applicant and her mother, V.K. and his wife, G.A. and A.Sh.

29. V.K., a police officer of the Apsheronk police department, stated that at about 10.30 a.m. on 31 May 2008 he was going home after his shift. He already knew about his cousin B’s arrest by FSKN

officers. He saw B's daughter, A, running down the street. She was frightened. She told him that some people were beating her father. According to V.K.'s wife, an investigator at the Apsheronk police department, she had been at home at about 10 a.m. on 31 May 2008. At some point thereafter her husband came home with A, who was frightened and in a state of shock.

30. According to G.A., the applicant's violin teacher, after the events of 31 May 2008 the applicant, previously a successful student and winner of a regional competition, was unable to play the violin as before.

31. According to A.Sh. (interviewed on 19 August 2008), on 30 May 2008 he was approached by two individuals who asked him to participate in a test purchase operation as an attesting witness. He agreed. The operation lasted two days. On 31 May 2008 he witnessed B's arrest near school no. 1. An FSKN officer, E.N., handed over a bag containing money to B, after which B was approached by several persons in civilian clothing who showed him their documents and took him to their car. There was another car nearby in which a girl was sitting. B told the girl quickly to go home. The FSKN officers did not shout at the girl, did not close the doors of the car in which she was sitting, or block her way out. About fifteen minutes later they started searching the car and the girl came out. She was frightened but was not hysterical and did not cry. She walked away and then ran. The officers did not use any physical force against B.

32. On 21 August 2008 investigator M.V. again refused to institute criminal proceedings against the FSKN officers on the grounds that their actions lacked the elements of a crime under Article 286 of the Criminal Code. He stated that it had not been established that physical force had been used against B or that A had been forcibly kept in a car. The doors of the car had been open and she had been able to leave the car on her own afterwards. No physical or psychological violence or threats had been used against her. The FSKN officers' presence near the car had not obstructed her freedom of movement. After she had run away, she had not been pursued and there had been no attempts to return her in order to hold her in the car and restrict her liberty. Having taken note of medical certificates concerning A's state of health after the events of 31 May 2008, the investigator stated that the FSKN officers' actions aimed at arresting A's father, the uncertainty of what exactly had been going on and how to act in such a situation, the mistaken assessment of the police officers' behaviour as deliberate restriction of her freedom of movement, together with A's well-developed imagination and sensitivity, had served as a powerful source of stress to her, which could have caused her subsequent health disorder.

33. The investigator's decision was annulled again and an additional round of the pre-investigation inquiry was ordered.

34. Investigator M.V. obtained the transcript of B's examination by an investigator of the investigative committee in the presence of a lawyer on 24 July 2008. According to B's statement, S.K. and other FSKN officers had knocked him to the ground, delivered several blows to his torso and handcuffed him. While apprehending him they had torn his shirt. B had not resisted arrest. The blows he had received had not left bruises on his body.

35. On 22 August 2008 investigator M.V. interviewed P.M., another attesting witness of the test purchase of drugs carried out in relation to B. According to P.M.'s explanations, which were essentially similar to those of A.Sh. (see paragraph 31 above), the arresting officers were in civilian clothing. B behaved calmly, his shirt was unbuttoned but not damaged, and there were no injuries

on him. B talked to [A] firmly. The FSKN officers asked him why he was ordering her to go home, stating that they could take her along with him when going to his house to carry out a search. B disagreed.

36. According to an operational officer of the FSKN unit in Tuapse, E.N., who acted as a buyer in the drugs test-purchase operation (interviewed by investigator M.V. on 24 August 2008), on 30 May 2008 B gave him drugs and they agreed that he would pay B the following day. The transfer was watched by the attesting witnesses from a car. At about 8.30 a.m. on 31 May 2008 near school no. 1, after a telephone conversation between them, E.N. handed over a bag with money to B. B's daughter was sitting in a car nearby. After the transfer of the money, E.N. and B were arrested by approximately eight persons in civilian clothing who had jumped out of two cars. They introduced themselves and produced their documents. They were from the FSKN and the Federal Security Service. No physical force, strong-arm tactics or holds were used against B during his arrest. B behaved calmly and did not resist arrest. No physical or psychological violence or threats were used against B's daughter. Nobody blocked the doors of the car in which she was sitting.

37. According to Apsheronk police officers K.A. (interviewed on 22 August 2008) and M.I. (interviewed on 1 September 2008), on 31 May 2008 they were passing by school no. 1 in a car and saw their colleague, B. They stopped, got out of the car and walked towards him. Their way was blocked by several persons in civilian clothing who explained that they could not go any further since there was an operation underway. B was about ten metres away. His shirt was open and apparently slightly torn. The buttons on the shirt were missing. They did not see any bodily injuries on B. The situation was calm, and they left.

38. According to FSKN officer S.S. (interviewed on 24 August 2008), on 31 May 2008 he arrived at the place of the arrest after B's apprehension and went to B's house together with his colleagues. He saw the applicant approaching her house and then going away.

39. According to S.P., an operational officer of the Belorechensk unit of the Krasnodar regional department of the Federal Security Service (interviewed by investigator R.Z. from the investigative committee on 29 August 2008), who had been present during B's arrest, physical force was used against B because he had been trying to flee the scene of the crime. The force used was necessary and not excessive, that is it did not involve B being beaten up. B's daughter was sitting in B's car. B was invited to inform his wife that she should come and take the girl away. However, B insisted that the girl should run home. The girl listened to her father and ran home. No one held her or chased her.

40. On 29 August 2008 investigator M.V. also interviewed A.Z., a senior operational officer of the internal security unit of the FSKN's Krasnodar regional branch, who had carried out (from 30 July 2008 to 7 August 2008) an internal investigation following the complaint lodged by the applicant's mother with the FSKN. A.Z. related his findings as follows. According to explanations received from FSKN officers S.K., V.D., A.O. and V.E., as well as individuals P.M., I. and G., B was not beaten up during his arrest, and A was not held forcibly in a car. B himself ordered her to get out of the car and she ran away. No one chased her or used measures of psychological influence against her. R.G., an electrician working for Energoservis, was checking traffic lights at the intersection near the place of the arrest. He confirmed having seen FSKN officer S.K. apprehending B and delivering several blows to his body. However, given that the director of Energoservis had not "officially" confirmed

whether R.G. had been working that day, and that R.G. had been registered since 25 February 2007 as a drug user and had been repeatedly arrested by the FSKN for administrative offences involving drugs consumption, he could have given false statements aimed at discrediting the FSKN officers. According to a “specialist” consulted in relation to A’s medical documents, A was highly sensitive, emotionally unstable, selective in her contacts, and had a high level of anxiety. Taking into account her pre-existing neurological pathology, even a minor stressful situation, especially involving her father, would have sufficed to cause her psychological trauma. Her father might not necessarily have been beaten up in her presence. The fact that she had been in a car for a long time was irrelevant for the stress she had suffered. Therefore, the internal investigation did not establish the FSKN officers’ guilt in relation to the temporary damage to A’s health which had occurred during B’s arrest.

41. On 1 September 2008, relying on the above material and using the same reasoning as in his previous decision, investigator M.V. refused to institute criminal proceedings against FSKN officers S.K., V.D., A.O., V.E., E.N. and S.S. He added that in the absence of intent to harm A’s health, the FSKN officers’ lawful and justified actions in arresting B lacked the elements of a crime.

D. Judicial review of the decision not to investigate

42. In proceedings conducted under Article 125 of the Code of Criminal Procedure on 12 September 2008, the Apsheronk District Court dismissed an appeal lodged by the applicant’s mother against the investigator’s decision of 1 September 2008, holding that the decision had been lawful and well-founded because it was supported by a comprehensive and objective pre-investigation inquiry and complied with the Code of Criminal Procedure. On 22 October 2008 the Krasnodar Regional Court upheld the District Court’s decision on the applicant’s appeal. It stated that in certain circumstances force could be used lawfully by law-enforcement officers. Moreover, no injuries had been recorded on B. The conclusion of the FSKN internal investigation about the lack of guilt on the part of the FSKN officers in the applicant’s temporary health disorder had been based on a specialist’s opinion concerning her reaction to a conflict situation. The District Court had therefore rightly assessed the investigator’s refusal to institute criminal proceedings.

E. Termination of the criminal proceedings against B

43. On 30 December 2009 investigator R.K. from the investigative committee of the Krasnodar regional prosecutor’s office terminated the criminal proceedings against B for lack of the elements of a crime in his actions, on the grounds that evidence in the case had been obtained unlawfully. The original copy of the record of the test purchase of drugs, on the basis of which the criminal proceedings had been instituted, was missing. The available copy of the record was different from the original (in particular, indicating a different place at which E.N. had handed over the drugs to the FSKN officers) and therefore fictitious. In order to establish the circumstances of the drugs sale, investigator R.K. questioned P.M., one of the attesting witnesses to the sale of drugs. According to P.M.’s witness statement, he had testified falsely, at the request of the FSKN officers, to having seen the transfer of drugs from B to E.N. and from E.N. to the FSKN officers on 30 May 2008. That day P.M. had not met the FSKN officers and had not witnessed any transfers of drugs. On 31 May 2008 FSKN officer S.S. had taken him and another attesting witness, A.Sh., to a place near school no. 1 in

Apsheronk. When they had arrived, B had been standing handcuffed near a car. There had been a bag containing money in the car. P.M. had not seen who had put it there. Then they had gone to B's home in order for a search to be carried out, but they had not been let in by B's wife. They had gone to the FSKN office where P.M. had been shown a plastic bag and had been told that the bag with drugs had been sold by B to E.N., who had then handed it over to the FSKN officers. P.M. remembered signing documents at the FSKN officers' request without reading them.

44. Investigator R.K. noted that there were no video recordings or any other evidence which could objectively confirm that B had transferred drugs to E.N. Therefore, it was impossible to establish the circumstances of a sale of drugs. Furthermore, the criminal proceedings against B had been instituted by investigator A.F. in breach of Article 151 of the Code of Criminal Procedure, which provided that criminal cases concerning crimes committed by police officers were to be investigated by investigative committees of the prosecutor's office. The FSKN officers had been aware of B's status as a police officer. Therefore, the investigative actions carried out by the FSKN investigator A.F. had been unlawful and the evidence obtained had been inadmissible.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

45. The applicant complained that the unjustified use of physical force against her father during his arrest in her presence and her treatment by FSKN officers had breached her rights under Article 3 of the Convention. She further complained under Article 13 of the Convention that there had been no thorough and independent investigation into that incident. Articles 3 and 13 of the Convention read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

46. The Government contested the applicant's allegations, relying on the results of the pre-investigation inquiry (see paragraph 17 above). They submitted that the applicant's presence during B's arrest at the scene of the crime, immediately after his receiving money for sold drugs, had not been anticipated. The arresting officers had been unable to predict the time and place of the offence

committed by B. If B had not been arrested, the evidence of the criminal offence would have been lost.

47. The Government stated that the authorities had conducted a comprehensive and thorough investigation into the applicant's alleged ill-treatment in compliance with Article 3. However, not a single piece of information, apart from what had been provided by the applicant's family members, had demonstrated that force had been used against the applicant's father or that she herself had been subjected to the treatment alleged. The applicant had availed herself of effective domestic remedies. The relevant decisions had not been in her favour because her allegations had been unsubstantiated.

2. The applicant

48. The applicant argued that as an involuntary witness to her father's cruel arrest and beatings, she had not received any support or protection from a State representative. After her father's arrest she had been left alone in his car, had run home alone and by chance had been found by one of her relatives in the street in a condition of profound shock. The incident had had serious consequences for her health and development. Ten years after the events complained of she was still suffering from its consequences. Given that she had been nine years old at the time and therefore more susceptible than an adult to the negative consequences of cruel treatment, and taking into account the long-lasting adverse effects it had had on her, the level of her suffering had been so high that her treatment by the police officers should be classified as torture.

49. The applicant further argued that the authorities should have anticipated her possible presence at the scene of the arrest, since the arrest had been carried out near the school where her father had taken her. They could have, for instance, communicated with the school administration to prevent her from coming out of the school at the time of the arrest, or to ensure the presence of a member of the school staff to provide her with psychological support during the arrest. Afterwards they could have taken her back to the school in order to shorten her presence at the place of the arrest or to avoid her going home unaccompanied. The authorities had had the necessary time but had not taken any measures to prevent or minimise the harm to her health.

50. The authorities had refused to initiate criminal proceedings into the applicant's alleged ill-treatment by the police and, instead of a proper investigation, had carried out a superficial pre-investigation inquiry. Their decision had been based on the FSKN officers' statements and had failed to take into consideration evidence supporting the applicant's allegations and the contradictions between the statements of the FSKN officers and the witnesses.

B. Admissibility

51. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

C. Merits

1. General principles

52. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Kudła v. Poland* [GC], no. 30210/96, § 90, ECHR 2000-XI).

53. Where an individual makes a credible assertion that he or she has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. That investigation should be capable of leading to the identification and punishment of those responsible (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, Reports of Judgments and Decisions 1998-VIII).

54. Allegations of ill-treatment contrary to Article 3 of the Convention must be supported by appropriate evidence. To establish the facts, the Court applies the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 in fine, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

55. In respect of children, who are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of Articles 3 and 8 should be effective and include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity. Such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child (see *Söderman v. Sweden* [GC], no. 5786/08, § 81, ECHR 2013).

56. The Court has previously found in the case of *Gutsanovi* that the possible presence of children, whose young age makes them psychologically vulnerable, at the scene of an arrest is a factor to be taken into consideration in planning and carrying out this kind of operation (see *Gutsanovi v. Bulgaria*, no. 34529/10, § 132, ECHR 2013 (extracts)). In that case the Court found that the fact that the police operation had taken place in the early hours of the morning and had involved special agents wearing masks had served to heighten the feelings of fear and anxiety experienced by the children who had witnessed their father's arrest, to the extent that the treatment to which they had been subjected exceeded the threshold of severity required for Article 3 to apply, amounting to degrading treatment (*ibid.*, § 134).

2. Application to the present case

(a) The establishment of the facts

57. It is not disputed between the parties that the applicant was present at the place of B's arrest and saw what happened to him, and that shortly after those events she was diagnosed with a number of medical conditions, including a neurological disorder, enuresis and post-traumatic stress disorder. The applicant claimed that her health disorders had been caused by her exposure to a scene of violence against her father, who had not resisted his arrest, involving his being knocked to the ground and beaten up, notably being kicked repeatedly to his torso. The Government contested the applicant's allegations, claiming that B's arrest did not involve any use of force against him and that the authorities could not therefore be held responsible for any harm suffered by the applicant. In doing so the Government relied on the records of B's detention facility and the statements made in the course of the pre-investigation inquiry into the applicant's allegations by:

- FSKN officers S.K., V.D., A.O., V.E., E.N. and S.S.;
- Federal Security Service officer S.P.;
- Apsheronsk police officers K.A. and M.I.;
- attesting witnesses A.Sh. and P.M., and
- FSKN officer A.Z., who carried out the FSKN internal investigation (see paragraph 17 above).

The Court will examine that material, together with the other material in the case file before it.

58. According to the records from the detention facility in which B was detained after his arrest, he bore no traces of injuries and made no complaints (see paragraph 27 below). It is not necessary for the Court to examine the reliability of those records in view of B's own statements that the blows received by him during his arrest did not leave bruises on his body (see paragraph 34 above). It cannot be excluded that the alleged force used against B – notably being knocked to the ground and kicked several times – could have left no visible traces on his body. The Court notes in this regard that – according to B and witness R.G. (see paragraphs 10 and 13 above) – the FSKN officers who arrested B, including the one who allegedly used force against him, were dressed in tracksuits (see also the statements by attesting witnesses A.Sh. and P.M., FSKN officer E.N. and Apsheronsk police officers K.A. and M.I., who mentioned that the arresting officers had been in civilian clothing, paragraphs 31 and 35-37 above). This suggests that they may have been wearing trainers, which might not have caused the same blunt-trauma bruising and abrasions as army-type boots (see, for example, *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 39, 43, 45 and 96, 12 December 2017).

59. According to the identical written "explanations" made by FSKN officers S.K., V.D. and A.O., who apprehended B, and senior officer V.E., who was present during the arrest, no physical force was used against B during his arrest (see paragraph 24 above). According to FSKN officer E.N., who acted as a buyer in the undercover operation against B and was also present during B's arrest, no physical force, "strong-arm tactics" or "holds" were used against B (see paragraph 36 above). Apart from the fact that the above-mentioned officers had a direct interest in denying the accusations made against them by the applicant, their statements sit ill with those made by S.P. and R.G.

60. S.P., the Federal Security Service officer present during B's arrest, acknowledged that physical force had been used against B. He contended that it had been necessary because B had tried to escape, and had not been excessive, that is it had not escalated into a beating (see paragraph 39 above). It should be noted that S.P.'s statement that B had tried to escape finds no support in the statements of the FSKN officers (see paragraphs 24 and 36 above), the attesting witnesses (see

paragraphs 31 and 35 above) or witness R.G. (see paragraph 13 above). Nor was it claimed that B had resisted his arrest by using force.

61. According to R.G., an electrician who had been carrying out maintenance work on the traffic lights near school no. 1 on the morning of 31 May 2008 and witnessed B's arrest, FSKN officer S.K. delivered several blows to B during his arrest (see paragraph 40 above); he knocked B to the ground and kicked him (see paragraph 13 above). FSKN officer A.Z., who carried out the FSKN internal investigation, dismissed R.G.'s statements as unreliable. He alleged that R.G. was a drug user who had been arrested in the past for administrative offences of drugs consumption. Moreover, there had been no confirmation from his employer that R.G. had indeed been working in the area on 31 May 2008 (see paragraph 40 above). The Court does not find A.Z.'s assessment convincing, since he belonged to the same unit as the FSKN officers who were allegedly at fault, which raises an issue as to the independence of such an investigation. Apart from the fact that R.G.'s alleged drugs consumption or his employer's failure to submit the relevant certificate would not as such be sufficient grounds to discard his statements, no details were given as regards any administrative proceedings against him. Furthermore, R.G., whose testimony was very important for establishing the facts, was never interviewed by the investigative committee, which instead relied on A.Z.'s assessment. The same is true in respect of a "specialist" (whose name, qualifications and other details were not provided) allegedly consulted by A.Z. and on whose opinion A.Z. had relied in concluding that the applicant had a pre-existing neurological pathology which made her prone to psychological trauma as a result of even a minor stressful situation (see paragraph 40 above), to hold that her health disorders had been caused by her having observed B being arrested without any use of force against him. This conclusion was adopted by the official pre-investigation inquiry without ever questioning the "specialist".

62. The Court also notes that FSKN officer S.S. arrived at the place of B's arrest after B had been apprehended and therefore did not see his arrest (see paragraph 38 above). The same applies to B's colleagues from the Apsheronk police department, K.A. and M.I. (see paragraph 37 above). The latter contended that B's shirt had been open and slightly torn, and that the shirt buttons had been missing. K.A.'s and M.I.'s statements therefore confirm the applicant's allegation that during her father's violent arrest his shirt had been torn and its buttons ripped off. This is also supported by her parents' statements (see paragraphs 10, 12 and 34 above), as well as by photographs of the shirt (see paragraph 16 above).

63. Lastly, the Government relied on the explanations by attesting witnesses to the undercover operation against B carried out on 30 and 31 May 2008, A.Sh. and P.M., according to whom no physical force had been used against B during his arrest (see paragraphs 31 and 35 below). However, when examined as a witness a year later in relation to the criminal proceedings against B, P.M. acknowledged that he had testified falsely, at the request of the FSKN officers, that he had seen the transfer of drugs and money. He also acknowledged that on 31 May 2008 he and A.Sh. had been taken to the place of B's arrest after B had been apprehended (see paragraph 43 above). It follows from P.M.'s witness statements that neither he nor A.Sh. saw B being apprehended, and the explanations they submitted in the course of the pre-investigation inquiry into the applicant's complaint cannot have any evidentiary value. Furthermore, their statements, together with the findings in the decision terminating the criminal proceedings against B (see paragraphs 43-44

above), which were not disputed by the Government, discredit the explanations made by the FSKN officers, as well as the Government's arguments about the unpredictability of the offence committed by B and the applicant's presence at the "scene of the crime", and the need to arrest B in order to prevent the loss of evidence (see paragraph 46 above).

64. It transpires that E.N., who acted as a buyer in the FSKN operation against B, learned from a telephone call on the morning of 31 May 2008 that B was at the school (see E.N.'s statements and B's statements about informing E.N. that he was at the school with his child, paragraphs 36 and 10, respectively). When B came out of the school together with the applicant, E.N. was waiting for him. Immediately after the meeting between B and E.N., B was arrested by the FSKN officers, who acknowledged in their explanations to the investigative committee that when they apprehended B, he was near his car in which his daughter, A, was sitting (see paragraph 24 above). Federal Security Service officer S.P.'s statements also show that the law-enforcement officers participating in B's arrest were aware that B's daughter, A, was present at the place of arrest (see paragraph 39 above).

65. While the Court cannot examine the applicant's allegation that she had been left to go home unaccompanied, which was not raised in the domestic proceedings (see paragraph 23 above), and cannot establish beyond reasonable doubt on the basis of the material before it her allegations about being addressed rudely and held in the car, the above assessment leads the Court to conclude that her allegations concerning her being exposed to her father's arrest, and the violent nature of the arrest, were credible.

(b) Compliance with Article 3

66. The Court notes next that the Government's version of the facts was based on the pre-investigation inquiry, the first stage in the procedure for examining criminal complaints. The Court has held, however, that the mere carrying out of a pre-investigation inquiry, not followed by a preliminary investigation, is insufficient for the authorities to comply with the requirements of an effective investigation into credible allegations of ill-treatment by the police under Article 3 of the Convention (see *Lyapin v. Russia*, no. 46956/09, § 136, 24 July 2014, and, more recently, *Samesov v. Russia*, no. 57269/14, § 51, 20 November 2018). The Court has no reason to reach a different conclusion in the present case. The authorities responded to the applicant's credible allegations of treatment proscribed by Article 3 by carrying out a pre-investigation inquiry and refused to institute criminal proceedings and carry out a fully-fledged investigation. This was endorsed by the domestic courts, thereby departing from their procedural obligation under Article 3. The pre-investigation inquiry did not provide the Government with a proper basis to discharge their burden of proof and produce evidence capable of casting doubt on the applicant's credible allegations concerning her exposure to the violent arrest of her father, which the Court therefore finds established (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, § 85, 2 May 2017, and *Samesov*, cited above, § 53).

67. The interests of the applicant, who was nine years old at the time, were not taken into consideration at any stage in the planning and carrying out of the authorities' operation against her father. The law-enforcement officers paid no heed to her presence, of which they were well aware, proceeding with the operation and exposing her to a scene of violence against her father in the absence of any resistance on his part. This very severely affected the applicant and, in the Court's

view, amounted to a failure on the part of the authorities to prevent her ill-treatment (see paragraph 55 above).

68. There has therefore been a violation of the State's positive substantive obligation under Article 3 of the Convention.

69. There has also been a violation of Article 3 under its procedural limb in that no effective investigation was carried out in that respect.

70. In view of its finding of a violation of Article 3 under its procedural limb the Court does not find it necessary to examine separately under Article 13 of the Convention the applicant's complaint concerning the lack of an effective investigation into the incident of 31 May 2008.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

71. The applicant complained that the use of unjustified force against her father in her presence had also disregarded her feelings towards her beloved father in breach of her rights under Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

72. The Government contested that argument.

73. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

74. Having regard to the finding relating to the applicant's complaint under Article 3 (see paragraphs 67-68 above) which was based on the same facts as her complaint under Article 8, the Court considers that this complaint is absorbed by the preceding complaint and it is not therefore necessary to examine whether, in this case, there has also been a violation of Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

76. The applicant claimed compensation in respect of non-pecuniary damage, leaving it to the Court to determine its amount.

77. The Government submitted that Article 41 should be applied in accordance with the Court's case-law.

78. The Court awards the applicant 25,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

79. The applicant also claimed EUR 4,500 for the costs and expenses incurred before the Court.

80. The Government stated that Article 41 should be applied in accordance with the Court's case-law.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, notably a legal services agreement concluded by the applicant after lodging her application with the Court, and the above criteria, the Court considers it reasonable to award the sum of EUR 3,500 for costs and expenses for the proceedings before the Court.

C. Default interest

82. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;
2. Holds that there has been a violation of Article 3 of the Convention under its substantive limb in that the authorities failed to prevent the applicant's ill-treatment;
3. Holds that there has been a violation of Article 3 of the Convention under its procedural limb in that no effective investigation was carried out in respect of the applicant's complaint;
4. Holds that there is no need to examine the complaint concerning the lack of an effective investigation separately under Article 13 of the Convention;
5. Holds that there is no need to examine the complaint under Article 8 of the Convention;
6. Holds
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following

amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President